

Amendment No. 1 to SB0134

Kelsey  
Signature of Sponsor

**AMEND Senate Bill No. 134**

**House Bill No. 39\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 55-10-406, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) A law enforcement officer who has probable cause to believe that the operator of a motor vehicle is driving while under the influence of any intoxicant, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof as prohibited by § 55-10-401, or committing the offense of vehicular assault under § 39-13-106, aggravated vehicular assault under § 39-13-115, vehicular homicide under § 39-13-213(a)(2), or aggravated vehicular homicide under § 39-13-218, may request that the operator of the vehicle submit to a breath test, blood test, or both tests for the purpose of determining the alcohol or drug content, or both, of that operator's blood;

(2) The circumstances under which a breath test may be administered are governed by subsection (a) through subdivision (d)(4), and subsections (j)-(n). The circumstances under which a blood test may be administered are governed by subsections (e)-(n).

(b) A breath test may be administered under the following circumstances:

(1) The operator's implied consent to submit to a breath test pursuant to subdivision (d)(1);

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(2) The operator's express consent to submit to a breath test;

(3) A search warrant issued in accordance with title 40, chapter 6, part 1, and Rule 41 of the Tennessee Rules of Criminal Procedure;

(4) Incident to a lawful arrest for any of the offenses set out in subdivision (a)(1); or

(5) When a breath test is required to be administered pursuant to subsection (c).

(c)

(1) A law enforcement officer shall administer a breath test for the purpose of determining the alcohol or drug content of the operator's blood if the officer has probable cause to believe that the operator of the motor vehicle:

(A) Has been involved in an accident resulting in the injury or death of another and the operator of the vehicle has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401;

(B) Has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401; and a passenger in the motor vehicle is a child under sixteen (16) years of age; or

(C) Has committed a violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401 and has a prior conviction of a

violation of § 39-13-106, § 39-13-115, § 39-13-213(a)(2), § 39-13-218, or § 55-10-401.

(2) The breath test shall be performed in accordance with the procedure set forth in this section and § 55-10-408, and shall be performed, when required by subdivision (c)(1), or pursuant to a search warrant described in subdivision (b)(3), regardless of whether the operator consents to the test.

(3) The results of a breath test that is required to be performed by subdivision (c)(1) may be offered as evidence by either the state or the operator of the vehicle in any court or administrative hearing or official proceeding relating to the accident or offense, subject to the Tennessee Rules of Evidence.

(d)

(1) The operator of a motor vehicle in this state is deemed to have given implied consent to a breath test for the purpose of determining the alcohol content of that operator's blood, a breath test for the purpose of determining the drug content of the operator's blood, or both tests. However, no such breath test may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having probable cause to believe the operator was in violation of one (1) of the offenses set out in subsection (a).

(2) Any law enforcement officer who requests that the operator of a motor vehicle submit to a breath test authorized pursuant to subdivision (a)(1), shall, prior to conducting the test, advise the operator that refusal to submit to the breath test:

(A) Will result in the suspension by the court of the operator's driver license; and

(B) May result, depending on the operator's prior criminal history, in the operator being required to operate only a motor vehicle equipped

with a functioning ignition interlock device, if the operator is convicted of a violation of § 55-10-401.

(3) If the operator is not advised of the consequences of the refusal to submit to a breath test, the court having jurisdiction over the offense for which the operator was placed under arrest shall not have the authority to suspend the license of an operator or require the operator to operate only a motor vehicle equipped with a functioning ignition interlock device pursuant to § 55-10-417.

(4) Except as may be required by a search warrant or other court order, if the operator is placed under arrest, requested by a law enforcement officer to submit to a breath test, advised of the consequences for refusing to do so, and refuses to submit, the test to which the operator refused shall not be given, and the operator shall be charged with violating subdivision (d)(1). The determination as to whether an operator violated subdivision (d)(1) shall be made:

(A) At the same time and by the same court as the court disposing of the offense for which the operator was placed under arrest, upon motion of the state;

(B) At the operator's first appearance or preliminary hearing in the general sessions court, but no later than the case being bound over to the grand jury, if the state does not make a motion pursuant to subdivision (d)(4)(A); or

(C) By the court which determines whether the operator committed the offense, if the refusal is for a misdemeanor offense.

(e) Upon a finding of probable cause for an offense specified in subsection (a), a law enforcement officer may administer a blood test for the purpose of determining the alcohol or drug content, or both, of that operator's blood only:

(1) With the consent of the operator of the vehicle and after executing the waiver set out in subsection (g);

(2) With a search warrant issued in accordance with title 40, chapter 6, part 1, and Rule 41 of the Tennessee Rules of Criminal Procedure; or

(3) Without the consent of the operator of the vehicle if, on a case by case basis, one (1) or more of the recognized exigent circumstances to the search warrant requirements exist.

(f) The implied consent given by the operator of a motor vehicle pursuant to subdivision (d)(1), is not sufficient to comply with the consent required to administer a blood test pursuant to this section. Unless the operator voluntarily signs the waiver form, a properly executed search warrant or a recognized exigent circumstance is required to obtain blood from the operator.

(g) If the operator of a motor vehicle consents to the administration of a blood test to determine the alcohol or drug content of the operator's blood in the absence of a search warrant authorizing a blood test or a recognized exigent circumstance, the operator shall sign a standardized waiver developed by the department of safety and made available to law enforcement agencies that have the authority to make arrests for the offenses specified in subsection (a). If the operator cannot read the waiver for any reason, the officer shall read the waiver to the operator. If the waiver is read to the operator, no presumption of the operator's impairment or intoxication is created and no presumption is created that the operator understood the meaning or consequences of the form the operator signed. It is not admissible in court against the operator that the waiver was read to the operator and the operator shall have the opportunity in court to present evidence that the operator did not understand the meaning or consequences of signing the form. The operator shall sign and date the waiver and the law enforcement officer shall initial the waiver.

(h)

(1)

(A) If a blood test of the operator of a motor vehicle is authorized pursuant to this section, a qualified practitioner who, acting at the written request of a law enforcement officer, withdraws blood from an operator for the purpose of conducting a test to determine the alcohol or drug content in an operator's blood, shall not incur any civil or criminal liability as a result of the withdrawing of the blood, except for any damages that may result from the negligence of the person so withdrawing.

(B) Neither the hospital nor other employer of a qualified practitioner listed in subdivision (h)(2) shall incur any civil or criminal liability as a result of the act of withdrawing blood from any operator, except in the case of negligence.

(2) For purposes of this section, a "qualified practitioner" is a:

(A) Physician;

(B) Registered nurse;

(C) Licensed practical nurse;

(D) Clinical laboratory technician;

(E) Licensed paramedic;

(F) Licensed emergency medical technician approved to establish intravenous catheters;

(G) Technologist; or

(H) A trained phlebotomist who is operating under a hospital protocol, has completed phlebotomy training through an educational entity providing such training, or has been properly trained by a current or former employer to draw blood.

(i) Any operator who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension or otherwise in a condition rendering the operator incapable of refusal, shall not be subjected to a blood test unless law enforcement has obtained a warrant or one (1) or more of the recognized exigent circumstance exceptions to a search warrant apply.

(j) Provided probable cause exists for criminal prosecution for any of the offenses specified in subsection (a), nothing in this section shall affect the admissibility into evidence in a criminal prosecution of any chemical analysis of the alcohol or drug content of the defendant's blood that was not compelled by law enforcement but was obtained while the defendant was hospitalized or otherwise receiving medical care in the ordinary course of medical treatment.

(k) Nothing in this section shall affect the admissibility in evidence, in criminal prosecutions for aggravated assault or homicide by the use of a motor vehicle only, of any chemical analysis of the alcohol or drug content of the defendant's blood that has been obtained in accordance with this section and tested according to § 55-10-408.

(l) The results of a blood test or breath test authorized and conducted in accordance with this section and § 55-10-408:

(1) Shall be reported in writing by the person making the test, shall have noted on the report the time at which the sample analyzed was obtained from the operator, and shall be made available to the operator, upon request; and

(2) Shall be admissible in evidence at the trial of any person charged with an offense specified in subsection (a).

(m) The fact that a law enforcement officer failed to request that the operator charged with an offense specified in subsection (a) submit to a blood or breath test is admissible as evidence at the trial of the charged offense.

(n)

(1) It is an offense for the operator of a motor vehicle to intentionally refuse, prevent, or obstruct the administration of a breath test or blood test to determine the alcohol or drug content of the operator's blood if:

(A)

(i) The operator is required to submit to a breath test under subsection (c) or subdivision (b)(3);

(ii) The operator is required to submit to a blood test under subdivision (e)(2) or (e)(3); or

(iii) The operator is required to submit to both a breath test and a blood test under subsection (c) or subdivision (b)(3), (e)(2), or (e)(3); and

(B) The test or tests are administered in accordance with § 55-10-408.

(2) A violation of this subsection (n) is a Class A misdemeanor.

SECTION 2. Tennessee Code Annotated, Section 55-10-407, is amended by deleting subsection (b) and substituting instead the following:

(b) If the court or jury finds that the operator refuses to submit to a blood or breath test as required by § 55-10-406(b)(3), (c), (e)(2), or (e)(3), while driving on a license that was revoked, suspended, or cancelled due to a prior conviction as defined in § 55-10-405, the driver commits a Class A misdemeanor and shall be fined not more than one thousand dollars (\$1,000), and shall be sentenced to a minimum mandatory jail or workhouse sentence of five (5) days, which shall be served consecutively, day for day, and which sentence cannot be suspended.

SECTION 3. Tennessee Code Annotated, Section 55-10-407, is further amended by deleting from subdivision (e) the language "§ 55-10-406(d)(1)" and substituting instead the language "§ 55-10-406(d)(4)".



SECTION 4. Tennessee Code Annotated, Section 55-10-408, is amended by deleting from subsection (a) the language "§ 55-10-406(b)(1)" and substituting instead the language "§ 55-10-406(h)(2)".

SECTION 5. This act shall take effect July 1, 2017, the public welfare requiring it.